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UNITED STATES SUPREME COURT

NO. 83-949

WILLIAM H. STEPNEY :

VS. :

STATE OF CONNECTICUT : FEBRUARY 9, 1984

OPPOSITION TO MOTION FOR DAMAGES

Petitioner William H. Stepney in the above-captioned matter hereby opposes and responds to the State's Motion for Damages dated February 8, 1984 as follows.

The statement in said motion, "[a]s argued in the state's Brief in Opposition to the Petition for Certiorari, none of the four issues raised by the petitioner in this Court was seasonably presented as a federal question in the Connecticut Supreme Court" is entirely false. First, petitioner has not received, as of the date of this response, a copy of the State's Brief in Opposition and therefore cannot comment on matters raised or argued therein.

Secondly, issue two in petitioner's appeal to the Connecticut Supreme Court concerned whether or not the trial court erred in its instructions to the jury by focusing on the credibility of the defendant and his wife to the exclusion of all other witnesses. The claim of error was based on the deprivation of defendant's

Fourteenth and Fifth Amendment rights to due process caused by the combination of the trial court's focusing only on the testimony of defendant's wife and then commenting on the defendant's interest in the outcome of his case.

In his brief before the Connecticut Supreme Court on this issue, defendant specifically raised a Fourteenth and Fifth Amendment claim with regard to the trial court's jury instructions. Further, contrary to the State's assertion that such claim is "frivolous" and "wholly insubstantial," and that the case of Reagan v. United States, 157 U.S. 301 (1894) disposes of the matter, petitioner pointed to Quercia v. United States, 289 U.S. 466, 471 (1933), a later decision of this Court holding that the testimony of the defendant/witness is to be accorded the same weight as that of any other witness, and to State court decisions and several Eighth Circuit Court of Appeals decisions condemning the use of a charge calling to the jury's attention any interest the defendant might have in the outcome of the case. See United States v. Brown, 453 F.2d 101, 107 (8th Cir. 1971), cert. denied, 404 U.S. 978 (1972); United States v. Bear Killer, 534 F.2d 1253, 1259 (8th Cir.), cert. denied, 429 U.S. 846 (1976); United States v. Standing Soldier, 538 F.2d 196, 204 (8th Cir.), cert. denied, 429 U.S. 1025 (1976).

Additionally, it should be noted that one of the issues raised by petitioner only arose as a result of the decision by the Connecticut

Supreme Court on his appeal. That issue concerns whether or not it is proper to admit testimony by an accused that he wants to stop answering questions and consult with an attorney, together with a description of his demeanor while making such statements. On appeal below, as part of his claim that statements preceding his request for counsel and refusal to answer further questions should not have been admitted because they were inadmissible hearsay, petitioner specifically noted the prejudice that resulted from the admission of testimony concerning the termination of petitioner's interview. See Brief of Appellant at 55. See also Reply Brief of Appellant.

Thus, it is clear that the State's motion for damages should be denied. It should also be noted that the State in the present case files its request for damages pursuant to Rule 49.2 of this Court. Professor Moore, in his treatise, quoting the court in State of West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079, 1092 (2d Cir.), cert. denied sub nom Cotler Drugs, Inc. v. Chas. Pfizer & Co., 404 U.S. 871 (1971) specifically notes that "[t]he imposition of such sanctions, however, is highly unusual and requires a clear showing of bad faith on the part of appellants." 13 Moore's Federal Practice ¶849.03 (1982).[1]

Finally, it should be pointed out that the emphasis Professor Moore places in his treatise on the use of Rule 49.2 is on civil

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[1]In the present case, it is deserving of notice that the petition for writ of certiorari was not dismissed out of hand. The Court specifically requested the State to file a brief after they declined to do so.

matters and the loss of money interest caused by delay and not in criminal matters. In the present case, defendant, convicted of murder and sentenced to life imprisonment, seeks only to ensure that all the safeguards afforded him by the United States Constitution and the Connecticut Constitution have been accorded him in the rendering of that judgment. For such conduct he should not be penalized.

PETITIONER

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CERTIFICATION

This is to certify that a copy of the above was mailed on February 9, 1984 to Carl Schuman, Assistant State's Attorney, Office of the Chief State's Attorney, 100 South Turnpike Road, Box 5000, Wallingford, CT 06492.

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Sally S. King